



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert E. Corbin

December 4, 1989

The Honorable Jenny Norton
Arizona State Representative
State Capitol - House Wing
Phoenix, Arizona 85007

Re: 189-103 (R88-080)

Dear Representative Norton:

You have asked whether school-based clinics may dispense birth control contraceptives to pupils. We conclude the answer is no. You also have asked whether school-based clinics may provide pupils with birth control information. We conclude that if such information is to be provided, it may only be given through classes which have been properly approved by the local governing board in conformity with rules adopted by the Arizona State Board of Education, including the requirement of prior parental review.

Both of your questions pertain to a school district's powers. Because school districts are legislative creations they only have such powers as are granted to them by the Legislature. Oracle School Dist. No. 2 v. Mammoth High School Dist., 130 Ariz. 41, 43, 633 P.2d 450, 452 (App. 1981). We, therefore, look to Arizona's statutes to address your inquiry.

The legislative enactments governing school districts are set forth in title 15, Arizona Revised Statutes. A.R.S. §§ 15-341 and -342 set forth the powers and duties of school district governing boards. These two sections specifically delineate over forty separate provisions granting governing boards wide-ranging authority. Additionally, numerous other provisions in title 15 give governing boards additional powers. See, e.g., A.R.S. §§ 15-701 and -701.01 (promotion requirements), -705 (extracurricular activities), and -843 (disciplinary proceedings). None of these varied powers, however, expressly authorizes school boards to dispense birth control contraceptives to students.

School district governing boards, in addition to their express authority, also may exercise those powers which are "impliedly granted." Tucson Unified School Dist. No. 1 v. Tucson Educ. Ass'n., 155 Ariz. 441, 443, 747 P.2d 602, 604 (App. 1987). The only provision we have found which might give school boards implied authority to dispense birth control contraceptives to pupils in school-based clinics is A.R.S. § 15-502. This statute permits school boards to employ and fix the salaries of physicians, dentists and nurses which are "necessary for the succeeding year."

The mere employment of health care professionals by a school board, however, does not, in our opinion, give the school board authority to provide the full range of medical services such health care professionals may be licensed to perform.^{1/} No reasonable person, for example, would imply that A.R.S. § 15-502 authorizes school boards to retain physicians to regularly perform open heart surgery in Arizona's schools. The issue, then, is to determine what range of medical services may be implied from a school board's authority to employ physicians, nurses and dentists. That issue should be resolved by reading A.R.S. § 15-502 in context with related provisions in title 15. See Grant v. Board of Regents, 133 Ariz. 527, 529, 652 P.2d 1374, 1376 (1982) ("Statutory construction requires that the provisions of a statute be read and construed in context with the related provisions and in light of its place in the statutory scheme.")

Title 15 sets forth a variety of duties which health care professionals employed by school districts may perform. Such health care professionals, for example, may administer patent or proprietary medication^{2/} subject to the established policies and procedures of the school board. A.R.S. § 15-344. They also may assist the school board in its mission to provide

1. See A.R.S. §§ 32-1401 (definition of practice of medicine), -1202 (definition of practicing dentistry), and -1601 (definition of practical and professional nursing).

2. The term "administration of a patent or proprietary medication" means "the giving of a single dose of medication or the giving of a treatment package in its original container." A.R.S. § 15-344(B). Administration of a patent or proprietary medication to a minor student requires the written or oral request or authorization of a parent or legal guardian.
Id.

continuing learning for pupils with chronic health problems, A.R.S. § 15-346, and in adopting chemical abuse prevention policies and procedures, A.R.S. § 15-345. Additionally, health care professionals employed by a school board have implied authority to handle medical emergencies and to assist the Arizona Department of Health with regard to a school district's vaccination and immunization programs. See A.R.S. § 36-629.

The statutory scheme as a whole, however, does not convince us that school boards have implied authority to dispense birth control contraceptives merely because there is express authority to hire health care professionals. Rather, the services to be performed by health care professionals employed by a school board are those which are necessary to enable a school board to fulfill its powers and duties as set forth by the Legislature. We, therefore, conclude that school-based clinics may not dispense birth control contraceptives to pupils.

You also have asked whether school-based clinics may provide birth control information to students. We conclude that providing such information to students through school-based clinics would circumvent carefully established course of study rules of the State Board of Education (State Board) and local governing boards and, therefore, is prohibited.

The State Board has authority to prescribe minimum course of study and competency requirements. See A.R.S. § 15-203(A)(15) and (16). Pursuant to its authority, the State Board recently adopted A.A.C. R7-2-303. This rule was adopted "to allow common and high school districts to offer an elective course or lessons on sex education and provide districts with guidelines and requirements necessary for those programs." See Concise Explanatory Statement for R7-2-303 on file with the Secretary of State; see also A.R.S. § 41-1027(A) ("At the time it adopts a rule, an agency shall issue a concise explanatory statement"). In its summary of the proposed rule, the State Board stated:

The proposed rule provides that in the common schools, lessons may be taken only with the written request of the student's parent or guardian and that an alternative lesson be provided for students not enrolled in sex education lessons. The proposed rule provides that sex education instruction not exceed the equivalent of one class period per day for one

quarter of the school year and directs the establishment of a local advisory committee. The Rule also specifies that the district must hold at least one publicized hearing for review and comment on the proposed lessons, that lessons shall be taught to boys and girls separately, and the lessons be ungraded and require no homework or tests.

The proposed Rule provides that, in the common and high schools, that lessons shall not include the gathering of information about the student or his parents' personal beliefs or practices in sex, family life, morality, values or religion. The proposed Rule also states that lessons must be approved by the local district governing board and that approved instructional materials be made available for viewing by the public.

For common and high schools, the proposed Rule provides that lessons shall include content of instruction which is age appropriate, meets the needs of the district, recognizes local community standards and sensitivities and shall not include the teaching of abnormal, deviate or unusual sexual acts and practices. Instruction shall include emphasis upon the power of the individual to control his/her own personal behavior and include instruction on how to say no to unwanted sexual advances and to resist negative peer pressure.

The proposed Rule states that all sex education instruction which discusses sexual intercourse shall stress abstinence, stress that sexually transmitted diseases are a serious and widespread public health problem, and include a discussion of consequences of preadolescent and adolescent sexual intercourse and pregnancy. Instruction shall also promote honor and respect for monogamous heterosexual marriage and advise pupils of Arizona law pertaining to financial responsibilities of parenting and legal liabilities related to sexual intercourse with a minor.

The proposed Rule requires all districts offering a governing board approved sex education course to certify compliance to the Arizona Department of Education as a prerequisite to the initiation of instruction.

The rule, adopted by the State Board, is consistent with the Summary. The rule was adopted only after the State Board received written comments from 465 individuals, heard oral testimony from 83 individuals and received petitions containing over 10,000 signatures. As adopted, the rule requires that, prior to any sex education instructional materials being provided to common school pupils, a student's parent or guardian must request that the pupil be involved in the course, a local advisory committee must be established, and at least one publicized hearing must be held for review and comment on the proposed lessons. Additionally, for both common schools and high schools, the rule requires that lessons be approved by the local district governing board, the approved instructional materials be available for viewing by the public and the lessons recognize local community standards.

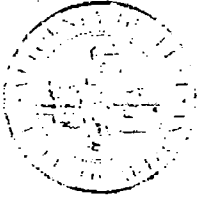
The State Board, therefore, has carefully established both a process and a policy as to how sex education materials are to be provided to pupils. The State Board adopted its rule only after obtaining a tremendous amount of public comment. It also insured that sex education materials would be available to pupils only in a structured class environment and only after there was parental, public and local district governing board involvement in the establishment and teaching of the class. Given these facts, we conclude that to allow a school-based clinic to distribute birth control information directly to pupils would violate the State Board's process and policies as reflected by the Board's rule. We, therefore, conclude that while information concerning birth control may be provided to pupils as part of a course of study in sex education pursuant to A.A.C. R7-2-303, such information may not be distributed by school-based clinics.

Sincerely,

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